

FILED

NO. _____

At 3:10 O'clock P M

THE STATE OF TEXAS

THE DISTRICT COURT APR 17 2014

VS.

OF BROWN COUNTY, TEXAS

Clerk District Court Brown Co. TX

THE NAMED DEFENDANT
IN THIS CASE

By _____
35TH JUDICIAL DISTRICT

Deput.

THIRD AMENDED STANDING PRETRIAL ORDER IN CRIMINAL CASES

Section 1.01 In this case, subject to the restrictions provided by Section 264.408, *Texas Family Code (CPS or CASA)*, and Article 39.15 of the *Texas Code of Criminal Procedure (Child Pornography)*, the State, through the office of its District Attorney for the 35th Judicial District of Texas, is ordered to produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the Defendant, of any offense reports, any designated documents, papers, written or recorded statements of the Defendant or a witness, including witness statements of law enforcement officers, but not including the work product of counsel for the State in the case and their investigators and their notes or reports, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the State or any person under contract with the State. The State may provide to the Defendant's attorney electronic duplicates of any documents or other information described in Article 39.14 of the *Texas Code of Criminal Procedure (Discovery)*. This Order does not extend to written communications between the State and an agent, representative, or employee of the State. This Order does not authorize the removal of the documents, items, or information from the possession of the State, and any inspection shall be in the presence of a representative of the State. The State shall comply with this Order as soon as practicable and may do so either by delivering a copy to the Defendant's attorney or making available to the Defendant's attorney at the office of the District Attorney or appropriate law enforcement agency within this county for inspection and copying, the items required to be produced including the following:

- (1) **STATEMENTS OF THE DEFENDANT**, concerning the offense alleged in the indictment, which have been reduced to writing and evidence presently in tangible form (except the work product of the District Attorney's Office, Law Enforcement Agencies, or persons or entities assisting in the investigation of this cause at the request of Law Enforcement Agencies or the District Attorney's Office) and all evidence presently in tangible form which the State will rely upon to show compliance with the requirements for admissibility of such statements under Art. 38.22, *Texas Code of Criminal Procedure*. These items are to be furnished as soon as practicable, but not later than twenty days prior to jury voir dire.

(2) Any **EVIDENCE** known to the District Attorney which tends to indicate whether the **Defendant was insane or not legally responsible** under Section 8.01 of the *Texas Penal Code* at the time of the conduct alleged in the indictment, including particularly: evidence of any diagnosis of defendant as having, or treatment of the Defendant for, mental disease or defect; previous trauma or injury to Defendant's head; and prior adjudications of Defendant's legal competency or sanity. These items are to be furnished as soon as practicable after the pretrial date set in this cause, but not later than the time set for call of this cause on the plea deadline date.

(3) **TANGIBLE THINGS** which constitute or contain evidence material to this cause, of which the District Attorney has knowledge, and which are in the possession, custody, or control of the State or any of its agencies, (except written statements of persons other than the Defendant and the notes or reports of any peace officer who investigated the offense; or the work product of the District Attorney's Office, Law Enforcement Agencies, or persons or entities assisting in the investigation of this cause at the request of Law Enforcement Agencies or the District Attorney's Office) including:

a. **TESTS**: The results of any and all scientific tests of whatever nature made by an State agency or a contract agency at the request of the Police, Sheriff's Department, or the District Attorney's Office, the result of which would in any manner be material to the guilt or innocence of the Defendant; the results of any chemical or scientific identification or comparison test performed by the State in connection with the offense alleged in the indictment, including a description of all items and substances tested, and the conclusions, if any, drawn by the person(s) performing the test; provided, that if the District Attorney shall be of the opinion that any tangible thing is or contains his work product of the District Attorney's Office, Law Enforcement Agencies, or persons or entities assisting in the investigation of this cause at the request of Law Enforcement Agencies or the District Attorney's Office, such items shall be produced only to the Court for in camera inspection, whereupon the Court may determine if the same is not to be within the scope of this Order.

b. **EVIDENCE**: Any and all papers, objects, letters, tangible things, or real evidence, which is in the possession of the Police, the Sheriff's Department, the District Attorney's Office or their employees, or any other State agencies or their employees, which was seized or gathered at the time of the arrest or during the investigation relative to this offense, and which may in any way be material to the guilt or innocence of the Defendant;

c. **FINGERPRINTS**: Any and all fingerprint impressions which may have been obtained by whatever means and processed from the scene or found as a result of the investigation of this offense, whether such fingerprints were fingerprints of the

Defendant or were fingerprints from some other person or persons known or unknown;

d. **PHOTOGRAPHS**: Any and all photographs, other digital images, or other electronic recordings (other than booking photos) which may have been made of the Defendant while in the custody and control of the Police, Sheriff's Office or the District Attorney's Office or any other State agency;

e. **PHOTOGRAPHS**: Any photographs, digital images, or other electronic recordings (other than booking photos) which may have been made of any co-defendant or any other suspect while such person was in the custody and control of the Police, Sheriff's Office, or the District Attorney's office or any other State agency;

f. **PHOTOGRAPHS**: Any photographs, digital images, or other electronic recordings which may have been made in reference to this case either by the Police, the Sheriff's Office, the District Attorney's Office, or any other State agency, or any photographs from whatever source that the State intends to introduce at any stage of this cause.

g. **PHOTOGRAPHS**: Any and all photographs, digital images, or other electronic recordings which have been shown to any witness with regard to the offense in question, whether the same be photographs of the Defendant or any other suspect in this case, together with the results of said line-up and the names, addresses, and phone numbers of all persons present at such line-up.

h. **NEGATIVES**: Any and all photographic negatives which may have been made in regard to the investigation of this cause whether or not such negatives have been developed into photographs;

i. **PROPERTY**: Any and all property in the possession of any agents of the State of Texas or seized by an agents of the State of Texas which belongs to or is alleged by the State to belong to the Defendant, other than property at the jail.

j. **WEAPON**: Any weapon or weapons which the State of Texas alleges or may allege was seized at the time of the commission of the alleged offense;

k. **CONTRABAND SUBSTANCES** alleged in the indictment to be in possession of the Defendant.

l. **LINE-UP**: Any line-up sheet, photographs of physical line-up, and other documentation of any physical line-ups or photographic line-up shown to any witness in this cause, regardless of whether said line-up contained this Defendant, or any other

suspect in this case, together with the results of said line-up and the names, addresses, and phone numbers of all persons present at such line-up.

m. **MAPS, DIAGRAMS, CHARTS, DRAWINGS**: Any maps, drawings, charts or drawings made of the alleged scene of the crime or otherwise made in connection with the investigation of this case by any person, that is now or has been in possession of the State, if the State intends to use such evidence in any manner in the trial of this case.

n. **DEMONSTRATIVE EXHIBITS**: Any demonstrative exhibit made by any agent of the State, or by any other person, in connection with the investigation of this case or in preparation for the trial of this case, if the State intends to offer into evidence or use such exhibits in any manner during the trial of this case.

o. **JURY AIDS**: Any and all physical items which the State has prepared as jury aids or for any other demonstrative purpose during its preparation for the trial of this case, if the State actually intends to use such jury aid in any manner during the trial of this cause.

p. **RECORDINGS**: Copies of any and all audio and/or video recorded tapes, digital video recordings, or other recordings of the Defendant which may have been made by or that are now in the custody of the Police, Sheriff's Office, District Attorney's Office or any other agent or agency of the State, except any recordings of grand jury proceedings.

q. **RECORDINGS**: Copies of any and all audio and/or video recorded tapes, digital video recordings, or other recordings of the alleged victim which may have been made by or that are now in the custody of Police, Sheriff's Office, District Attorney's Office or any other agent or agency of the State, except any recordings of grand jury proceedings sought by the State to be offered under Article 38.071 of the *Texas Code of Criminal Procedure* and *Texas Rules of Evidence* 801(e)(1)(D).

r. **CONSENT**: The text of any written or oral consent to search or seizure of any place, person, or thing executed by any person in connection with the investigation of this cause, whether or not such consent was ultimately used as authority by the State to conduct such a search.

s. **TRANSCRIPTS**: Copies of any and all written transcripts prepared from audio and/or video recorded tapes, digital video recordings, or other recordings by agents of the State, or that are in the possession of the State, that were made in connection with the investigation of this case, or in preparation for the trial of this case, if the State intends to use such transcripts during the trial of this cause, or

whether or not such transcripts have been shown to any witness.

These items are to be furnished as soon as practicable after the pretrial date set in this cause, but not later than the time set for call of this cause on the plea deadline date unless the items did not exist until after the plea deadline date.

(4) **EXCULPATORY EVIDENCE** Pursuant to Article 39.14(h) of the *Texas Code of Criminal Procedure*, notwithstanding any other provision of this Order, the State shall disclose to the Defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the State that tends to negate the guilt of the Defendant or would tend to reduce the punishment for the offense charged.

(5) **A LIST OF ALL NON-EXPERT WITNESSES** who will be called by the State as witnesses in its case in chief on guilt/innocence at the trial of this cause and at the punishment phase if known in advance by the District Attorney. A copy of the State's Subpoena Application is sufficient for this purpose. Witnesses are to be instructed by the District Attorney to bring into Court and make available when they testify prior writings of the witnesses concerning the matters involved in this cause and materials used by the witness to refresh his memory prior to testifying. These items shall be furnished no later than seven (7) days before trial and, if possible, at the close of business on the plea deadline date. However, the list of State's witnesses may be supplemented later for sufficient cause.

(6) **THE STATE SHALL PRODUCE TO THE DEFENSE A LIST OF ALL TESTIFYING EXPERT WITNESSES** (those witnesses being called by the State to present evidence under Rules 702, 703, and 705, *Texas Rules of Evidence*) on its case in chief on guilt/innocence at the trial of this cause, and at the punishment phase, if known in advance by the District Attorney. A copy of the State's subpoena application is sufficient for this purpose provided that it includes both the name and the address of the expert witness. The disclosure of the expert witnesses shall be furnished no later than twenty (20) days before the date the trial begins.

(7) **COPIES OF COMPUTERIZED CRIMINAL HISTORY**, if any, of the Defendant, the victim, and any witness requested who will testify for the State of Texas in this cause, with the exception of law enforcement personnel, medical records custodians, or expert witnesses; provided the Defendant's attorney timely names the witnesses in writing or in open court. These items are to be furnished as soon as practicable after the plea bargain date as set in this cause, but not later than at the time of the calling of the witness to testify.

(8) **AGREEMENTS**, if any, known to the District Attorney between the State or

other governmental agency and any witness, not to prosecute the witness for criminal acts or to recommend a particular punishment in the disposition of a criminal case, or conversations with any witness which could possibly influence the witness' testimony in the above styled and numbered cause. Specifically, if any witness for the prosecution has discussed, been promised, or has accepted any such agreement, or if any such agreement has been implied between the prosecution or any other law enforcement agency and the witness or a representative of the witness which might induce the witness to testify or have the belief that the testimony will be to his benefit, the Defendant has a right under the due process clause of the Fourteenth Amendment to be informed of any such agreement. The disclosure of any such agreement is necessary so that the Defendant may properly cross-examine the witness and demonstrate the witness' possible bias or motive for testifying. Compliance with this Order should be made in writing and at least seven (7) days prior to the commencement of the trial in this case.

(9) The District Attorney shall give reasonable notice of the State's intent to introduce any evidence of the prior criminal record of the defendant, his general reputation, his character, and opinion regarding his character, the circumstances of the offense for which he is being tried, and any other evidence of an **EXTRANEIOUS OFFENSE, CRIME OR BAD ACT** shown to have been committed by the defendant or for which he could be held criminally responsible, and which the State feels would possibly be admissible in the trial of this case, either in its case in chief, on rebuttal, or on the issue of punishment. Such information shall be provided to the Defendant's attorney no later than seven (7) days prior to the beginning of jury selection in a jury case or no later than seven (7) days prior to the time of the calling of the first witness in a nonjury case. Further, such information shall be provided to the Defendant's attorney in the manner indicated above in compliance with Rule 404(b), *Texas Rules of Evidence* and 37.07 3 (g) *Texas Code of Criminal Procedure*.

Section 1.02 If only a portion of the applicable document, item, or information is subject to discovery under this Order and Article 39.14 of the *Texas Code of Criminal Procedure*, the State is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The State shall inform the Defendant that a portion of the document, item, or information has been withheld or redacted. On request of the Defendant, the Court shall conduct a hearing to determine whether withholding or redaction is justified under Article 39.14 of the *Texas Code of Criminal Procedure* or other law.

Section 1.03 In the case of a Pro Se Defendant, the State is ordered to produce and permit the inspection of a document, item, or information required under this Order in compliance with Article 39.14(d) of the *Texas Code of Criminal Procedure*. The State shall permit the

Pro Se Defendant to inspect and review the redacted versions of the document, item, or information, as provided in Section 1.05 of this Order; but is not required to allow copying of anything other than the Defendant's own statement. The State is not required to provide electronic duplication.

Section 1.04 Except as provided by Section 1.05 of this Order, the Defendant, the attorney representing the Defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the Defendant may not disclose to a third party any documents, evidence, materials, or witness statements received from the State under this Order unless:

- (1) this Court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or
- (2) the documents, evidence, materials, or witness statements have already been publically disclosed.

Section 1.05 The attorney representing the Defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the Defendant, may allow a Defendant, witness, or prospective witness to view the information provided under this Order, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this provision, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this provision, the Defendant may not be the agent for the attorney representing the Defendant.

Section 1.06 Nothing in this Order shall be interpreted to limit an attorney's ability to communicate regarding his or her case with the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness, including name, except as provided in Section 1.04 and 1.05 of this Order, address, telephone number, driver's license number, social security number, date of birth, and bank account information or any information that by reference would make it possible to identify a victim or a witness. Nothing in this provision shall prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purposes of making a good faith complaint.

Section 1.07 The State shall electronically record or otherwise document any document, item, or other information provided to the Defendant under this Order.

Section 1.08 Before accepting a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the Defendant under this Order.

Section 1.09 If at any time before, during, or after trial the State discovers any additional document, item, or information required to be disclosed under Section 1.01(4) of this Order, the State shall promptly disclose the existence of the document, item, or information to the Defendant or the Court.

Section 1.10 This Court may order the Defendant to pay costs related to discovery as provided by law.

Section 1.11 This Standing Pretrial Order is intended to provide equal or greater requirements of discovery as provided in Article 39.14 of the *Texas Code of Criminal Procedure*.

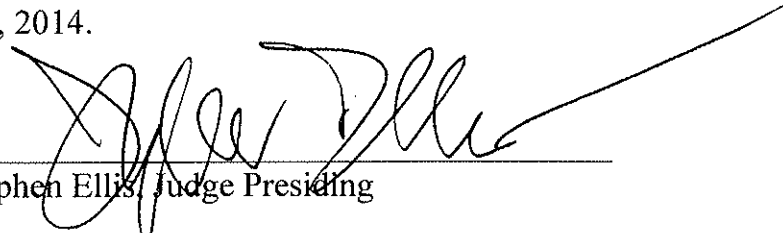
Section 1.12 THE DEFENSE SHALL PRODUCE TO THE STATE A LIST OF ALL TESTIFYING EXPERT WITNESSES (those witnesses being called by the Defense to present evidence under Rules 702, 703, and 705, *Texas Rules of Evidence*) on its case in chief on guilt/innocence at the trial of this cause, and at the punishment phase, if known in advance by the Defense Attorney. A copy of the Defendant's subpoena application is sufficient for this purpose provided that it includes both the name and the address of the expert witness. The disclosure of the expert witnesses shall be furnished no later than twenty (20) days before the date the trial begins.

Section 1.13 THE DEFENSE SHALL FILE WITH THE COURT ANY MOTION TO REDACT PORTIONS OF STATE'S EXHIBITS as soon as practicable, but not less than twenty (20) days prior to trial.

Section 1.14 ALL DIGITAL EXHIBITS FROM EITHER THE STATE OR THE DEFENSE SHALL BE IN THE FORMAT REQUIRED BY THE APPELLATE COURTS OF THE STATE OF TEXAS. Specifically, all digital video disk exhibits containing video files need to be in ".mp4" format, all audio files need to be in ".mp3" format, all images need to be on a completely separate disk than audio/video files.

Section 1.15 This Third Amended Standing Pretrial Order is effective April 21st, 2014 and modifies any previous standing pretrial order for any pending criminal case in which the indictment or information alleges the offense was committed on or after January 1st, 2014.

SIGNED this the 17 day of April, 2014.



Stephen Ellis, Judge Presiding